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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE FRANCISCO TAPIA,

Defendant and Appellant.

D067856

(Super. Ct. Nos. JCF34038, JCF33430)

APPEAL from a judgment of the Superior Court of Imperial County, Diane B. Altamirano, Judge. Affirmed.

Marianne Harguindeguy, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler and Julie L. Garland, Assistant Attorneys General, Arlene A. Sevidal and Andrew Scott Mestman, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Jorge Francisco Tapia of inflicting injury on Andrea Singh, his son's mother (Pen. Code,<sup>1</sup> § 273.5, subd. (a); counts 1, 5); felony child abuse (§ 273a, subd. (a); count 2); vandalism of property; (§ 594, subd. (a); counts 3, 6); disobeying a court order (§ 166, subd. (a)(4); count 4); and resisting, obstructing or delaying a peace officer (§ 148, subd. (a)(1); count 7). It found true an allegation that Tapia committed count 5 while on bail (§ 12022.1). The court sentenced Tapia to six years in prison as follows: two years on count 2, plus two years for the bail enhancement, plus one year each on counts 1 and 5.<sup>2</sup>

Tapia contends the court: (1) abused its discretion by granting the prosecution's motion to consolidate the charges for trial; (2) erroneously denied his section 1118.1 motion to acquit on counts 1 and 2; (3) improperly instructed the jury with CALCRIM No. 840; and (4) violated section 654 by not staying the count 1 sentence. We affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

### *A. The July 3, 2014 Incident (Counts 1-4)*

Singh's mother testified that Singh was driving her car out of a residential parking lot with Singh's mother in the front passenger seat and Singh's son in the back seat. Suddenly, Tapia approached in his vehicle and blocked Singh's exit. Despite the fact that Singh's mother had obtained a restraining order against Tapia, he exited his vehicle,

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> The abstract of judgment is incorrect because it misidentifies the count to which each sentence is attached; and should therefore be amended on remand.

banged on the window of Singh's vehicle, and shouted profanities at Singh, while demanding to see his son. Singh resumed driving her car. Tapia jumped on the hood of Singh's car and continued to yell and threaten Singh. Singh's mother called 911. All the occupants of the car were afraid, and Singh was hysterical as she and her son cried. Tapia punched the windshield of Singh's car so many times that it smashed, sending glass shards flying into the car, including near the 4-year old child. The glass caused Singh to suffer a cut to her right elbow. Singh's mother was afraid the smashed windshield had made it too dangerous to drive; therefore, she asked Singh to stop the vehicle.

Brawley Police Department Officer Brian Perez testified that he responded to the scene following a call regarding a protective order violation. He saw Tapia angrily yelling while standing on the hood of Singh's car. He ordered Tapia to come down, and detained him. Tapia was bleeding from a cut on his hand. Singh, her son, and her mother were crying and appeared scared. Officer Perez noticed blood on Singh's shirt, and determined it came from her right elbow. He had paramedics check her out. Officer Perez noticed glass shards throughout the interior of Singh's vehicle, including on the back seat, "less than inches" from where the child was seated.

Officer Perez asked Singh if she wanted to obtain a protective order against Tapia, and obtained one for her after she said yes. That day, officer Perez served it on Tapia, who said, "I don't care about that. It means nothing." Officer Perez confirmed that Singh's mother had earlier obtained a still active restraining order forbidding Tapia from being within 100 yards of her. Officer Perez had the paramedics check Singh's mother also. Officer Perez arrested Tapia. Officer Perez interviewed Singh, whose account of

the incident accorded with her mother's testimony set forth above. Singh's mother testified at trial that after the incident, Singh's son's behavior changed; he became more nervous and withdrawn, wetting himself again and hiding under the bed.

Singh changed her testimony at trial, minimizing the degree of aggression that Tapia displayed during the incident. Singh testified that she had lied to police on the day of the incident, and later at the preliminary hearing. Singh claimed she was cut by a piece of shattered windshield glass when she placed her arm on the center console.

*B. The October 15, 2014 Incident (Counts 5-7)*

Singh's sister testified that Tapia phoned Singh, advising her that their son needed to go to the hospital. Singh left her class to attend to that matter. However, when Singh reached Tapia's residence, he took her cell phone, threw it on the ground and broke it. He also hit Singh, injuring her face and left arm, and causing her ears to ring. Singh was crying and upset; therefore, Singh's sister called the police and reported the incident.

Days later, Singh's face turned black and blue.

Imperial County Sheriff's Deputy Christopher Nunez testified he responded to the call and interviewed Singh, who was upset and crying hysterically. Singh said that when she went to Tapia's house, he accused her of talking to somebody via social media. In the ensuing argument, Tapia kicked and hit Singh on her face and arm, and kicked her right shin. Tapia also threw her phone on the ground, breaking it. Deputy Nunez saw Singh's injuries. Deputy Nunez asked Singh if she wanted a protective order; she said yes, and one was obtained, prohibiting Tapia from contacting Singh. Deputy Nunez estimated that

Tapia was six feet tall and weighed 250 pounds; and, Singh was five feet, eight inches tall, and weighed 150 pounds.

While Deputy Nunez was talking to Singh, Imperial County Sheriff's Deputy Albert Contreras responded to Tapia's residence to further investigate the incident. Deputy Contreras testified that he told Tapia he needed to speak to him; however, Tapia locked himself in the bathroom for several minutes and repeatedly told Deputy Contreras to get a warrant. Eventually, Deputy Contreras kicked the door in and arrested Tapia.

At trial, Singh testified that when she had told her sister that Tapia had hit her, she was speaking out of anger. She claimed she had lied about this incident in her declaration written on the day of the incident, and later at the preliminary hearing.

## DISCUSSION

### I.

#### *The Court Did Not Err by Consolidating Two Cases*

Tapia contends the trial court abused its discretion by consolidating the case regarding the July 2014 incident with that regarding the October 2014 incident. He argues the consolidation prejudiced him and denied him his constitutional right to a fair trial. He contends the first incident included a charge of child abuse, which could have inflamed the jury against him. He further argues the second incident could also have inflamed the jury because of the "graphic descriptions of [Singh's] black eye, and injuries to her arms and legs." Tapia suggests that some evidence would not be cross-admissible because of the likelihood of prejudice. He also argues the first incident was weaker and,

through consolidation, it was bolstered by the spillover effect of the second incident, which was supported by stronger evidence.

#### *A. Background*

The People moved to consolidate the two cases, arguing that joinder was proper under section 954 because both cases involved the same parties and domestic violence; they were connected together in their commission, as in each case the parties' son was present; and, the son was the reason for the parties contacting each other on both days.

Tapia opposed the motion, arguing that if the cases were tried separately, evidence regarding the first incident would be inadmissible in a trial regarding the second incident. He further argued that in a consolidated trial, the evidence regarding the first incident would inflame the jury against him; finally, he argued the second incident likely would have prejudicial spillover effects on the case regarding the first incident.

The trial court granted the motion to consolidate: "It's appropriate, given the similarity of the victims, the witnesses. And [section 954] dictates, based on both scenarios, that the cases should be joined. And with regard to prior acts or [Evidence Code section] 352 issues, it will be up to the trial judge to filter all that out."

#### *B. Legal Principles*

"Section 954 provides that '[a]n accusatory pleading may charge two or more different offenses connected together in their commission . . . or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more accusatory pleadings are filed in such cases in the same court, the court may order them to be consolidated.' Even where the statutory requirements for joinder are satisfied,

however, 'a trial court has discretion to order that properly joined charges be tried separately.' " (*People v. Scott* (2015) 61 Cal.4th 363, 395.)

" 'The law favors the joinder of counts because such a course of action promotes efficiency.' " (*People v. Scott, supra*, 61 Cal.4th at p. 395; *People v. Trujeque* (2015) 61 Cal.4th 227, 259.) " 'A unitary trial requires a single courtroom, judge, and court attach[és]. Only one group of jurors need serve, and the expenditure of time for jury voir dire and trial is greatly reduced over that required were the cases separately tried. In addition, the public is served by the reduced delay on disposition of criminal charges both in trial and through the appellate process.' " (*People v. Soper* (2009) 45 Cal.4th 759, 772.) "For these and related reasons, consolidation or joinder of charged offenses 'is the course of action preferred by the law.' " (*Ibid.*)

Nevertheless, " '[r]efusal to sever may be an abuse of discretion where: (1) evidence on the crimes to be jointly tried would not be cross-admissible in separate trials; (2) certain of the charges are unusually likely to inflame the jury against the defendant; [or] (3) a "weak" case has been joined with a "strong" case, or with another "weak" case, so that the "spillover" effect of aggregate evidence on several charges might well alter the outcome of some or all of the charges . . . .' " (*People v. Scott, supra*, 61 Cal.4th at p. 396.) "If the evidence underlying the joined charges would have been cross-admissible at hypothetical separate trials, 'that factor alone is normally sufficient to dispel any suggestion of prejudice and to justify a trial court's refusal to sever properly joined charges.' " (*People v. Merriman* (2014) 60 Cal.4th 1, 38.)

"In determining whether denial of the severance motion was an abuse of discretion, we examine the record before the trial court at the time of its ruling." (*People v. Scott, supra*, 61 Cal.4th at p. 396.) To establish an abuse of discretion in this context, Tapia "must make a clear showing of prejudice . . . ." (*Ibid.*)

### C. Analysis

We agree with the trial court's assessment of the issue of cross-admissibility. Tapia concedes that both cases involved domestic violence. In hypothetical separate trials, evidence of the first incident would be admissible in the trial regarding the second incident because the parties are the same and, in both instances, Tapia injured Singh, a former cohabitant and mother of his child. In both incidents the parties' son was the reason for both parties encountering each other. Following the first incident, Singh obtained a temporary restraining order against Tapia.

Tapia can establish error requiring severance of the charges only on "a '*clear showing of prejudice* to establish that the trial court *abused its discretion*' " (*Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1220), meaning that its ruling falls outside the bounds of reason in denying the severance motion. (*People v. Ramirez* (2006) 39 Cal.4th 398, 439.) Tapia has failed to convince us that the court's ruling meets this stringent standard. The trial court carefully analyzed the issue of severance in light of the relevant law, and we find no basis for considering its ruling as whimsical. "Having concluded the trial court correctly determined the issue of cross-admissibility, we need not analyze the other factors described above." (*People v. Bradford* (1997) 15 Cal.4th 1229, 1317.)

Although we find the trial court's denial of Tapia's severance motion proper at the time it was made, "[b]ecause the issue is raised on appeal following trial [and Tapia asserts he was denied a fair trial by the denial of his severance motion], we must also consider whether 'despite the correctness of the trial court's ruling, a gross unfairness has occurred from the joinder such as to deprive the defendant of a fair trial or due process of law.' " (*People v. Sandoval* (1992) 4 Cal.4th 155, 174.) On the issue of prejudice, Tapia argues that some jurors might have been unduly prejudiced against him because the evidence in the first incident might have evoked in them "an impulse to protect the child"; as to the second incident, Singh's "black eye, and injuries to her arms and legs likely had a prejudicial effect on the whole consolidated case"; and, the first incident had "serious factual deficiencies," but benefited from a spillover effect of the stronger case regarding the second incident. " 'One asserting prejudice has the burden of proving it; a bald assertion of prejudice is not sufficient.' [Citation.] We conclude, therefore, that defendant has failed to show that denial of severance deprived him of a fair trial." (*Sandoval*, at p. 174.)

## II.

### *The Court Did Not Err by Denying Tapia's Motion to Acquit*

#### *A. Count 1*

Tapia contends the prosecutor presented no evidence of direct application of force to support the count 1 charge; therefore, the court erroneously denied his section 1118.1 motion to acquit him of this charge.

## 1. *Background*

At the end of the People's case-in-chief, Tapia moved for a judgment of acquittal on counts 1, 2, 3, and 5. He argued as to count 1 that, under *People v. Jackson* (2000) 77 Cal.App.4th 574 (*Jackson*), Singh's injuries did not result from a direct physical contact by him. The People argued that *Jackson* was distinguishable on its facts. The court agreed with the People and denied the motion: "In this case it was defendant's direct application of force to the windshield that caused the victim to be cut when she moved her arm[.]"

## 2. *Applicable Law*

Under section 1118.1, a defendant may move for a judgment of acquittal on any charged offense if the evidence then before the court is insufficient to sustain a conviction of such offense. (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1182-1183.) "An appellate court reviews the denial of a section 1118.1 motion under the standard employed in reviewing the sufficiency of the evidence to support a conviction. [Citation.] 'In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves. Rather, we "examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.'" [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence and to special

circumstance allegations. [Citation.] "[I]f the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding." [Citation.] We do not reweigh evidence or reevaluate a witness's credibility.' [Citation.] Review of the denial of a section 1118.1 motion made at the close of a prosecutor's case-in-chief focuses on the state of the evidence as it stood at that point." (*People v. Houston* (2012) 54 Cal.4th 1186, 1215.)

Section 273.5 provides that any person who willfully inflicts corporal injury resulting in a traumatic condition upon a cohabitant or former cohabitant is guilty of a felony. As used in this section, "traumatic condition" means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. (§ 273.5, subd. (a).)

In *Jackson, supra*, 77 Cal.App.4th 574, the defendant had pushed the victim up against a car, but her injuries resulted from her act of turning around and tripping. (*Id.* at p. 576.) The defendant was convicted of willfully inflicting corporal injury on a spouse (§ 273.5, subd. (a)), but the *Jackson* court held that section 273.5 is not violated when "the victim's injury does not result from direct physical contact by the defendant." (*Jackson*, at p. 575.) The court explained that if the victim had fallen "as a direct result of the blows inflicted by [the defendant], we would conclude that [the defendant] inflicted the corporal injury she suffered in the fall;" however that was not the case in *Jackson*. (*Id.* at p. 580.) The *Jackson* court explained that since section 273.5 "is not violated

unless the corporal injury results from a direct application of force on the victim by the defendant[,] . . . the evidence in this case was insufficient to prove that appellant 'inflicted' corporal injury on his girlfriend within the meaning of . . . section 273.5." (*Jackson, supra*, 77 Cal.App.4th at p. 580.) The *Jackson* court modified the judgment to the lesser, necessarily included offense of battery against a cohabitant (*ibid.*; § 243, subd. (e)(1)).

### 3. Analysis

The facts of this case are distinguishable from those of *Jackson, supra*, 77 Cal.App.4th 574, which lacked evidence the defendant had personally caused the injuries to his victim. In contrast, Tapia did commit a volitional act, that of hitting the windshield until it shattered. Unlike in the *Jackson* case, the victim here did nothing to cause the injuries she received from Tapia's direct application of force, and there was no intervening force. "In general, '[p]roximate cause is clearly established where the act is directly connected with the resulting injury, with no intervening force operating.' " (*People v. Cervantes* (2001) 26 Cal.4th 860, 866.) The jury was entitled to interpret Tapia's conduct as an intentional and direct application of force on the victim, even if his hands did not directly touch and injure her body. (See *People v. Campbell* (1999) 76 Cal.App.4th 305 [under section 273.5, the assailant need only have the intent to commit the act, not the specific intent to inflict the traumatic injury].) As such, the evidence here is sufficient to support Tapia's conviction under section 273.5, subdivision (a).

## B. *Count 2*

Tapia contends the court erroneously dismissed his motion to acquit on count 2, arguing the People had presented insufficient evidence that his conduct of punching the car windshield was likely to produce great bodily harm to his son.

### 1. *Background*

At the end of the prosecutor's case-in-chief, defense counsel argued: "With respect to count 2, also there's been no evidence that Mr. Tapia willfully inflicted physical injury or mental suffering to the child. I get that he was scared, but being scared is not, by definition, mental suffering." The court denied the motion: "There was more than sufficient evidence of mental suffering of the child, not just how he behaved after the incident, in terms of getting under the bed and wetting his pants, but also just the day that it happened. The child was crying and visibly upset, so that's mental—that could be mental suffering in itself."

### 2. *Applicable Law*

Section 273a, subdivision (a) sets forth the elements of felony child abuse: "Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished[.]"

In making a factual determination regarding whether circumstances or conditions likely to produce great bodily injury existed, these nonexclusive factors may be

considered: "(1) the characteristics of the victim and the defendant, (2) the characteristics of the location where the abuse took place, (3) the potential response or resistance by the victim to the abuse, (4) any injuries actually inflicted, (5) any pain sustained by the victim, and (6) the nature and amount of force used by the defendant." (*People v. Clark* (2011) 201 Cal.App.4th 235, 245.) There is no requirement that the child actually sustain great bodily injury. (*People v. Sargent* (1999) 19 Cal.4th 1206,1221.)

### 3. Analysis

Tapia's son was four years old and riding in the rear seat of the vehicle when Tapia jumped on the hood and smashed the windshield, causing glass shards to land in the back seat next to the child. Singh had to stop driving because of the danger presented by continuing to drive without seeing out of the window. We conclude that under these circumstances, there was a substantial risk of great bodily injury to the child. It is merely fortuitous that one of the glass shards did not injure him. He was particularly vulnerable because of his age and limited ability to remove himself from the danger posed by Tapia's irresponsible conduct. The evidence showed the boy cried during the incident, and subsequently he became withdrawn, urinated on himself and hid under the bed.

### III.

#### *The Court Did Not Err by Instructing the Jury with CALCRIM No. 840*

Tapia contends that the court gave a misleading instruction regarding causation as to count 1, and the jurors likely interpreted the instruction as being about the causation between his application of force and Singh's injury. He argues that this instruction thus reduced the prosecutor's burden of proof in violation of his constitutional rights. Tapia

further argues, "Here, causation was not at issue. All witnesses agreed that [Singh's] cut on her arm was a natural and probable consequence of her contact with glass. Because causation was not at issue, the wording is confusing. Out of its appropriate context, the instruction seems to describe proximate cause between appellant's actions and [Singh's] injuries. This is how the jury interpreted the instruction." Tapia contends: "It is understandable that the jury misunderstood the elements of section 273.5, subdivision (a) because the definition of a 'traumatic condition' in the jury instruction was misleading, circular, and had no apparent application to this case."

#### *A. Background*

Defense counsel did not object to the court instructing the jury with this version of CALCRIM No. 840: "The defendant is charged in count 1 with inflicting an injury on the mother of his child that resulted in a traumatic condition . . . in violation of . . . section 273.5 [subdivision] (a). To prove that the defendant is guilty of this crime, the People must prove that the defendant willfully and unlawfully inflicted a physical injury on the mother of his child and the injury inflicted by the defendant resulted in a traumatic condition. [¶] The defendant did not act in self-defense. [¶] Someone commits an act willfully when he or she does it willingly or on purpose. A traumatic condition is a wound or other bodily injury, whether minor or serious, caused by the direct application of physical force. A traumatic condition is the result of an injury. If the traumatic condition was the natural and probable consequence of the injury, the injury was a direct and substantial factor in causing the condition, and the condition would not have happened without the injury. [¶] A natural and probable consequence is one that a

reasonable person would know is likely to happen if nothing unusual intervenes. [¶] In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence. A substantial factor is more than a trivial or remote factor; however, it does not have to be the only factor that resulted in the traumatic condition."

In closing arguments, the prosecutor told the jury: "Traumatic condition is the result of an injury if the traumatic condition was the natural and probable consequence of the injury, the injury was a direct and substantial factor in causing the condition, and the condition would not have happened without the injury. So here we have the cut, and absent the cut . . . [Singh] would not have had the injury. [¶] A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. An example of this would be if there's shattered glass everywhere and somebody's nearby it or on top of it or the shattered glass is coming at them, a pretty direct and natural sequence [*sic*] of having shattered glass fly at you is receiving a cut."

### 1. *Applicable Law*

It is error to give an instruction that correctly states a principle of law but has no application to the facts of the case. (*People v. Guiton* (1993) 4 Cal.4th 1116, 1129.) However, if this is the only error, it is one of state law subject to the test articulated in *People v. Watson* (1956) 46 Cal.2d 818. (*Guiton*, at pp. 1129-1130.) "[S]uch an error is usually harmless, having little or no effect 'other than to add to the bulk of the charge.' [Citation.] There is ground for concern only when an abstract or irrelevant instruction creates a substantial risk of misleading the jury to the defendant's prejudice." (*People v. Rollo* (1977) 20 Cal.3d 109, 123, superseded by constitutional amendment on another

ground as stated in *People v. Castro* (1985) 38 Cal.3d 301, 307-308.) "In determining whether there was prejudice, the entire record should be examined, including the facts and the instructions, the arguments of counsel, any communications from the jury during deliberations, and the entire verdict." (*Guiron*, at p. 1130.)

## 2. Analysis

Tapia contends "the causation portion of CALCRIM No. 840 was given incorrectly because it was not implicated by the facts." He speculates the instruction's wording was confusing and the jury might have misunderstood it, but he provides no evidence from the record, such as a question from the jury to the court regarding the issue. He further asserts, "Unless one reads [CALCRIM No. 840] very carefully, it seems to be describing a relationship between the actions of the defendant and the victim's injury." But on appeal, we presume the jury carried out its job diligently. (See *People v. Sanchez* (2001) 26 Cal.4th 834, 852 ["Jurors are presumed able to understand and correlate instructions and are further presumed to have followed the court's instructions."].)

Tapia's contention fails because a party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general or incomplete unless the party has requested appropriate clarifying or amplifying language. (*People v. Lang* (1989) 49 Cal.3d 991, 1024, abrogated on another ground in *People v. Diaz* (2015) 60 Cal.4th 1176, 1190; *People v. Spurlock* (2003) 114 Cal.App.4th 1122, 1130.) The trial court is not required to give such a pinpoint or amplifying instruction on its own initiative, "and if the instruction as given is adequate, the trial court is under no obligation

to amplify or explain in the absence of a request that it do so." (*People v. Mayfield* (1997) 14 Cal.4th 668, 767, overruled on other grounds in *People v. Scott, supra*, 61 Cal.4th at p. 390, fn. 2.) A defendant's failure to request a clarifying or amplifying instruction at trial forfeits any argument on appeal that the instruction given was ambiguous or incomplete. (*People v. Cole* (2004) 33 Cal.4th 1158, 1210.)

#### IV.

##### *The Court Was Not Required to Stay the Count 1 Sentence Under Section 654*

Tapia contends the court did not understand the scope of its discretion when it imposed consecutive sentences on counts 1 and 2. He argues the court should have stayed the count 1 sentence under section 654. He requests that we remand the matter to allow the court to properly exercise its discretion.

##### *A. Background*

Tapia argued at the sentencing hearing that because he had committed counts 1 and 2 during the same course of conduct, the trial court should have stayed the count 1 sentence under section 654. The People contended that consecutive sentences were appropriate because the victims were different. The court ruled, "I do find the argument persuasive on the [section] 654. So I am giving him one-third the middle term on both [section 273.5, subdivision (a)] counts."

##### *B. Applicable Law*

Under section 654, "[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be

punished under more than one provision." The statute thus prohibits punishment for two crimes arising from a single, indivisible course of conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.)

However, there is a multiple victim exception to section 654. This judicially-created exception permits separate punishment for each crime of violence against a different victim, even if such crimes are in furtherance of a single objective. (*People v. Palacios* (2007) 41 Cal.4th 720, 727; *People v. Felix* (2009) 172 Cal.App.4th 1618, 1630-1631 ["An assailant's greater culpability for intending or risking harm to more than one person precludes application of section 654."].)

The question of whether section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives it broad latitude in making this determination. (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.) Its findings on this question must be upheld on appeal if there is any substantial evidence to support them. (*Ibid.*) "We must "view the evidence in a light most favorable to the respondent and presume in support of the [sentencing] order the existence of every fact the trier could reasonably deduce from the evidence." ' ' (*Id.* at pp. 1312-1313.) On appeal we review the legal correctness of the court's ruling, not the court's reasoning. (*People v. Zapien* (1993) 4 Cal.4th 929, 976, superseded by statute on other grounds.)

### C. Analysis

Because Tapia's crimes involved violence, we apply the separate victim exception to section 654. Tapia knew his conduct risked injuring all of the passengers in the car. Section 654 is not a bar to his multiple punishment on counts 1 and 2. We conclude that

section 654's purpose of ensuring that a defendant's punishment will be commensurate with his culpability is satisfied here. (*People v. Correa* (2012) 54 Cal.4th 331, 341.)

#### DISPOSITION

The judgment is affirmed. The matter is remanded for the trial court to correct the abstract of judgment consistent with this opinion, and forward a certified copy to the Department of Corrections and Rehabilitation.

O'ROURKE, Acting P. J.

WE CONCUR:

AARON, J.

PRAGER, J.\*

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\* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.